KESATUAN PEKERJA-PEKERJA PERKAYUAN

v.

SYARIKAT JENGKA SDN BHD

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
NH CHAN JCA
MOKHTAR SIDIN JCA
[CIVIL APPEAL NO: W-04-24-95]
17 OCTOBER 1996

LABOUR LAW: *Collective agreements - Interpretation - Whether ordinary rules for construction of contracts applicable - Whether strict, technical and legalistic approach suitable - Whether should be construed according to equity, good conscience, and substantial merits of case - Industrial Relations Act 1967, s. 30(5) - Whether reasonable, pragmatic, broad and liberal approach preferable*

LABOUR LAW: *Collective agreements - Termination - Whether workmen's benefits under collective agreement survive until fresh collective agreement concluded - Whether termination of collective agreement extinguishes rights and obligations flowing therefrom - Whether workmen entitled to increments after expiry of collective agreement*

The appellant is a trade union whose members are engaged in the timber industry whilst the respondent is a company which employs a number of the appellant's members. In 1985, the appellant and the respondent entered into a collective agreement ('the agreement') which provided, *inter alia*, that: (i) the agreement shall remain in force for three years, ie, from 1 January 1985 to 31 December 1987, and shall so remain in force unless terminated by a three-month notice given on or after 1 October 1987; and (ii) even after the expiry of the aforesaid period the agreement shall remain in force until a new collective agreement comes into effect. On 15 October 1987, the appellant wrote to the respondent forwarding, *inter alia*, proposals for a fresh collective agreement. The respondent did not reply, and, after 31 December 1987, ceased all payments in respect of its workmen's annual increments ('the increments') due under the agreement. The appellant lodged a complaint with the Industrial Court ('the IC') under s. 56 of the Industrial Relations Act 1967 ('the Act') and, subsequently, wrote to the respondent stating that its letter of 15 October 1987 was to be treated as a notice terminating the agreement.

The IC then handed down its first award holding that, in order to terminate the agreement, the appellant's letter/notice of 15 October 1987 had to be of three months' duration. Hence, the IC held that the respondent was obliged to pay all the increments until 14 January 1988. The respondent complied but ceased to make any further payments after 14 January 1988 on the ground that it has no obligation to make any further payments until a fresh collective agreement has been entered into. The appellant complained to the IC again, arguing that the workmen's benefits under agreement survives until a fresh collective agreement has been concluded. By a second award ('the 2nd award') the IC held that the agreement continued to be in force pending the making of a fresh collective agreement, and that the termination of the agreement did not extinguish the rights and obligations flowing therefrom. Dissatisfied, the respondent moved the High Court for certiorari to quash the 2nd award. The High Court acceded to the respondent's application and the appellant appealed to the instant Court.

Held:

Per Gopal Sri Ram JCA

[1a] The ordinary rules of construction whose assistance Courts often pray in aid to determine contractual intention do not apply when interpreting a collective agreement. An application of these rules will necessarily involve a strict and legalistic approach which is to be avoided. In interpreting a collective agreement, the court acts according to equity, good conscience, and the substantial merits of the case without regard to technicalities and legal form - as envisaged by s. 30(5) of the Act.

[1b] A collective agreement is not a commercial document entered into between businessmen aided by legal advice; it deals with far more basic issues that relate to the livelihood of workmen, such as their wages and other rudimentary benefits that are essential for sustaining life. Consequently, a reasonable, pragmatic, broad and liberal approach - shorn of an excess of legal learning - is called for when construing a collective agreement.

[2a] The principal issue for determination in the instant appeal was whether the parties, objectively, and having regard to the language employed in the agreement, intended that the agreement should continue in existence until a fresh collective agreement has been negotiated.

[2b] There was no error in the reasoning of the IC in the 2nd award. It was clear that the parties intended the agreement to remain in force (to ensure that the workmen would not receive any lesser benefits than those already in existence) until it has been replaced by another collective agreement.

[2c] The appellant's letter/notice of 15 October 1987 did not have the effect of permanently terminating the agreement.

[Appeal allowed; High Court's order for certiorari set aside; and Industrial Court's second award restored.]

*[**Bahasa Malaysia** Translation of Headnotes]*

UNDANG-UNDANG BURUH: *Perjanjian Kolektif - Pentafsiran - Samada kaedah-kaedah biasa untuk pentafsiran kontrak terpakai - Samada pendekatan yang tegas, teknikal dan bersifat keundangan bersesuaian - Samada harus ditafsirkan menurut ekuiti, dengan kemurnian dan merit-merit substansial kes - Akta Perhubungan Perindustrian 1967, s. 30(5) - Samada pendekatan yang wajar, pragmatik, luas serta liberal lebih patut dipakai*

UNDANG-UNDANG BURUH: *Perjanjian kolektif - Penamatan - Samada faedah pekerja di bawah perjanjian kolektif bertahan sehingga perjanjian kolektif yang baru ditamatkan - Samada penamatan perjanjian kolektif meluputkan hak dan kewajipan yang terhasil daripadanya - Samada pekerja berhak untuk mendapat kenaikan selepas perluputan perjanjian kolektif*

Perayu adalah kesatuan sekerja di mana ahli-ahlinya mengendalikan industri pembalakan sedangkan responden adalah sebuah syarikat yang mengambil bekerja sebilangan daripada ahli-ahli perayu. Dalam tahun 1985, perayu dan responden telah memasuki satu perjanjian kolektif ('perjanjian tersebut') yang memperuntukkan, antara lainnya, bahawa: (i)perjanjian itu akan kekal berkuatkuasa selama tiga tahun, iaitu daripada 1 Januari 1985 sehingga 31 Disember 1987, dan akan kekal berkuatkuasa sedemikian kecuali ditamatkan melalui notis tiga bulan yang diberikan pada atau selepas 1 Oktober 1987; dan (ii) sungguhpun selepas perluputan yang tersebut di atas, perjanjian itu akan kekal berkuatkuasa sehingga satu perjanjian kolektif yang baru berkutkuasa. Pada 15 Oktober 1987, perayu telah menulis kepada responden mengemukakan, antara lainnya, cadangan-cadangan bagi satu perjanjian kolektif yang baru. Responden telah tidak menjawab, dan, selepas 31 Disember 1987, memberhentikan kesemua pembayaran berhubung dengan kenaikan gaji tahunan pekerja-pekerjanya ('kenaikan-kenaikan tersebut') yang kena dibayar di bawah perjanjian tersebut. Perayu telah membuat aduan di Mahkamah Perindustrian ('IC') di bawah s. 56 Akta Perhubungan Perindustrian 1967 ('Akta') dan, berikutan itu, telah menulis kepada responden menyatakan bahawa suratnya bertarikh 15 Oktober 1987 hendaklah dianggapkan sebagai satyu notis yang menamatkan perjanjian tersebut.

IC kemudiannya telah memberikan awardnya yang pertama, memutuskan bahawa, untuk menamatkan perjanjian itu, surat/notis perayu bertarikh 15 Oktober 1987 haruslah bagi tempoh selama tiga bulan. Oleh itu, IC memutuskan bahawa responden bertanggungan untuk membayar kesemua kenaikan sehingga 14 Januari 1988. Responden telah mematuhinya tetapi berhenti membuat apa-apa pembayaran yang seterusnya selepas 14 Januari 1988 atas alasan bahawa ianya tidak mempunyai tanggungan untuk membuat apa-apa pembayaran yang selanjutnya sehingga satu perjanjian kolektif yang baru telah dimasuki. Perayu sekali lagi mengadu kepada IC, dengan berhujah bahawa faedah-faedah pekerja di bawah perjanjian tersebut bertahan sehingga satu perjanjian kolektif dimuktamadkan. Melalui award kedua ('award ke-2') IC memutuskan bahawa perjanjian tersebut berkuatkuasa secara berterusan sementara menantikan suatu perjanjian kolektif yang baru dibuat, dan bahawa penamatan perjanjian tersebut tidak meluputkan hak dan tanggungan yang dihasilkan olehnya. Berasa tidak puashati, responden mengusul Mahkamah Tinggi untuk *certiorari* bagi membatalkan award ke-2 tersebut. Mahkamah Tinggi bersetuju dengan permohonan responden dan pemohon telah merayu kepada Mahkamah semasa.

Diputuskan:
Oleh Gopal Sri Ram HMR:

[1a] Kaedah-kaedah biasa pentafsiran yang mana bantuannya kerap dipohon oleh Mahkamah-mahkamah bagi menentukan niat kontraktual tidak terpakai apabila mentafsirkan sesuatu perjanjian kolektif. Pemakaian kaedah-kaedah ini akan pasti melibatkan pendekatan yang tegas dan bersifat keundangan yang mana hendaklah dielakkan. Dalam mentafsirkan sesuatu perjanjian kolektif, Mahkamah bertindak menurut ekuiti, dengan kemurnian, dan merit-merit substansial kes itu tanpa menghiraukan alasan-alasan teknik dan bentuk undang-undang sepertimana yang dibayangkan oleh s. 30(5) Akta.

[1b] Sesuatu perjanjian kolektif bukannya merupakan satu dokumen komersial yang dimasuki antara peniaga-peniaga yang dibantu oleh nasihat-nasihat guaman; ianya berurusan dengan isu-isu yang lebih asas yang mana berkaitan dengan mata pencarian pekerja seperti gaji mereka dan lain-lain faedah asas yang penting bagi mempertahankan kehidupan. Akibatnya, suatu pendekatan yang wajar, pragmatik, luas dan liberal - tanpa penglibatan undang-undang yang berlebihan - diperlukan ketika mentafsirkan sesuatu perjanjian kolektif.

[2a] Isu utama untuk penentuan dalam rayuan semasa ini adalah samada pihak-pihak tersebut, secara objektifnya, dan berhubung dengan bahasa

yang digunakan dalam perjanjian tersebut, bermaksud bahawa perjanjian itu seharusnya berterusan sehingga satu perjanjian kolektif yang baru telah dirundingkan.

[2b] Tidak terdapat kesilapan dalam alasan IC dalam award Ke-2. Ianya jelas bahawa pihak-pihak tersebut berniat supaya perjanjian itu kekal berkuatkuasa (bagi memastikan bahawa pekerja-pekerja itu menerima faedah-faedah yang tidak kurang daripada yang telahpun wujud) sehingga ianya telah digantikan oleh satu perjanjian kolektif yang baru.

[2c] Surat perayu/notis bertarikh 15 Oktober 1987 tidak mempunyai kesan yang menamatkan secara tetap perjanjian itu.

[Rayuan dibenarkan; Perintah Mahkamah Tinggi untuk certiorari diketepikan; dan Award kedua Mahkamah Perindustrian dipulihkan.]

Cases referred to:

General Ceramics Manufacturers Sdn. Bhd. v. Non-Metallic Mineral Products Manufacturing Employees' Union & Anor. [1988] 3 MLJ 474 ***(refd)***

National Union of Hotel, Bar & Restaurant Workers v. Casuarina Beach Hotel Sdn. Bhd. [1986] 2 MLJ 17 ***(refd)***

Delhi Cloth Mills Co. Ltd. v. Its Workmen [1969] 2 LLJ 755 ***(aff)***

The Life Insurance Corporation of India v. D.J. Bahadur & Ors. AIR [1980] SC 2181 ***(refd)***

Legislation referred to:

Industrial Relations Act 1967, ss. 30(5), 56

[Appeal from High Court Malaya, Kuala Lumpur; Originating Motion No: R2-25-105-1991]

For the appellant - P. Kuppusamy; M/s. P. Kuppusamy & Co.
For the respondent - N. Sivabalah; M/s. Shearn Delamore & Co.

JUDGMENT

Gopal Sri Ram JCA:

This is an appeal against the decision of the High Court quashing, by the issue of **certiorari**, an award of the Industrial Court ('the second award') interpreting an earlier award ('the first award') by that Court. When, at the conclusion of arguments before us, we allowed the appeal, we indicated to Counsel that reasons for our decision will be given in due course. These now follow:

The appellant is a registered trade union whose members are engaged in the timber industry. The respondent is a private limited company that employs a

number of the appellant's members. In 1985, the appellant and the respondent entered into a collective agreement ('the collective agreement') cll. 38(95) to 38(99) of which reads as follows:

Article 38: Duration And Termination

95. This agreement shall remain in force for a period of three (3) years from 1 January 1985 and continue to be in force unless terminated by three (3) months' notice in writing given by either party to the other party on or after 1 October 1987.

96. However, this agreement shall continue to be in force until a new collective agreement comes into effect even after expiry of this period.

97. During the currency of this agreement, neither party shall seek to varify, modify, annul or add to any of its terms in any way whatsoever save by operation of law or mutual agreement.

98. In the event both parties agreeing to vary any of the terms of the agreement, both parties shall jointly deposit such variation of the terms of agreement with the Industrial Court for its cognisance within one month from the date of agreement on the said variation.

99. In respect of para. 95, the party that gives such notice shall also submit proposal on terms and conditions for negotiation. In the event of deadlock being reached in negotiation for a new agreement, the matter shall be referred to the Industrial Relations Department, for conciliation and, if necessary to arbitration by the Industrial Court in accordance with the provisions of the Industrial Relations Act 1967.

Thus, the collective agreement was, in the first instance, to be for a period of three years from 1 January 1985 until 31 December 1987. As the collective agreement approached its stipulated expiry date, the appellant evinced an intention to negotiate a fresh agreement with the respondent. For this purpose, it wrote to the respondent on 15 October 1987 drawing the latter's attention to the fact that the collective agreement was scheduled to expire on 31 December 1987 and forwarding proposals for a fresh agreement. From the record provided, it appears that the respondent did not reply this letter.

Meanwhile, 31 December 1987 passed whereupon the respondent ceased payment of the annual increment to its workmen due under the collective agreement. In consequence, the appellant, on 18 July 1988 pursuant to the provisions of s. 56 of the Industrial Relations Act 1967 ('the Act'), complained to the Industrial Court against the respondent for non-compliance with the terms

of the collective agreement. Pending the hearing of the aforesaid complaint, the appellant, on 30 August 1988 wrote to the respondent informing the latter that the former's letter of 15 October 1987 was to be treated as a notice terminating the collective agreement.

On 27 September 1988, the learned Chairman of the Industrial Court handed down the first award. By a process of reasoning the logic of which remains unclear, he held that the notice of 15 October 1987 in order to effectively terminate the collective agreement, had to be of three-months' duration. He went on to hold that the three month period only expired on 14 January 1988 and that the respondent was accordingly obliged to pay all increments until that date.

The respondent, in purported compliance with the terms of the first award and the collective agreement, paid its workmen all increments that were due up to 14 January 1988, but thereafter ceased to make any further payment. The rather disingenuous argument of the respondent for this cessation was that the collective agreement had been effectively terminated until a fresh agreement was entered into, there was no obligation to make any payment.

By reason of the respondent's stand, the appellant, on 30 May 1990, once again approached the Industrial Court for an interpretation of the first award, which, in turn, called for an interpretation of the relevant provisions of the collective agreement.

Before the Industrial Court, the appellant in support of its argument that the workmen's benefits under the collective agreement survived until a fresh agreement had been negotiated to conclusion, relied heavily upon the decision of the Supreme Court in *General Ceramics Manufacturers Sdn. Bhd. v. Non-Metallic Mineral Products Manufacturing Employees' Union & Anor.* [1988] 3 MLJ 474. The respondent's answer to this argument was that the case was covered by the majority decision of the Supreme Court in *National Union of Hotel, Bar & Restaurant Workers v. Casuarina Beach Hotel Sdn. Bhd.* [1986] 2 MLJ 17.

The Industrial Court handed down the second award on 11 July 1991. It held that despite the notice of 15 October 1987 the collective agreement continued to remain in force pending the making of a fresh agreement. The reasoning for its decision appears sufficiently from the following passages (at pp. 6 and 7 of the second award):

> The issue before us is whether the annual increment which becomes due and payable to the workers on 1 January 1988 will continue to be paid after the termination of the 1985 agreement. The union contended that they ought to be continued. The company on the other hand, contended that it could withdraw

it, as the 1985 agreement was terminated and there was no other collective agreement governing the payment of annual increment. In short, it questions the effect of the collective agreement when it is legally terminated by notice.

Termination of a collective agreement by either party does not have the effect of extinguishing the rights flowing therefrom. The effect of termination of a collective agreement is only to prevent thereafter the enforcement of the obligations under it in the manner prescribed, but the rights and obligations which flow from it are not wiped out. It is therefore our view that the annual increment which has became due and payable to the employees in January 1988 will continue to be paid even after the expiry date of the collective agreement on 14 January 1988, for -

The termination does not by itself abrogate the terms of the existing agreement. The terms of the agreement contended to have effect until a collective agreement was reached - per Tan Sri Hashim Yeop A. Sani SCJ (as he then was), in *Casuarina Beach Hotel's* case.

This, of course, meant that the respondent was obliged to continue making payments of increments already due under the collective agreement. The respondent being dissatisfied with this result moved the High Court for certiorari to quash the second award. The High Court acceded to the respondent's application principally on the ground that the Industrial Court had taken into account an irrelevant matter, namely, that it had chosen to apply the minority judgment of Hashim Yeop A. Sani SCJ in *National Union of Hotel, Bar & Restaurant Workers v. Casuarina Beach Hotel Sdn. Bhd.* (*supra*), instead of applying the views expressed by the majority in that case.

Before us, Kuppusamy of Counsel for the appellant argued that the Industrial Court had committed no error of law warranting interference by certiorari. Because we formed the preliminary view that the appeal had merit, we stopped Kuppusamy mid-stream during his submissions and called upon Sivabalah of Counsel for the respondent to support the judgment of the High Court.

Sivabalah submitted that the Industrial Court was wrong in applying the dissent of Hashim Yeop A. Sani SCJ in the *Casuarina Hotel* case and, for that reason, the second award was rightly quashed by the High Court. Counsel also submitted that the collective agreement, on its proper construction, did not survive its termination by the appellant's letter of 15 October 1987. According to Sivabalah, art. 38(96) was not a continuation clause and was not to be construed as such.

We are of the view that a discussion as to whether what was said in *General Ceramics* or by the majority in *Casuarina Hotel* is to be applied to the present case would be an academic exercise. These two cases, when properly read,

do not lay down any rule of universal application; they deal with particular fact patterns that presented themselves for curial resolution. The point that sets these two decisions apart concerns the construction of the particular agreement in each case.

The agreement in *General Ceramics* was, on its true interpretation, one that was intended by the parties to continue until another agreement had been entered into. On the other hand, the agreement in *Casuarina Hotel* was, on its proper construction, intended by the parties in that case not to continue after its termination. This is borne out by the following passage in the judgment of Mohamed Azmi SCJ in *General Ceramics*, at p. 476 of the report:

> Secondly, the argument of the company is that since the 1982 collective agreement had expired on 29 February 1984 the Industrial Court would have no jurisdiction to order compliance with any of its terms under s. 56. Reference was made to the majority decision of this Court in *National Union of Hotel Bar & Restaurant Workers v. Casuarina Beach Hotel Sdn. Bhd.* In that case the complaint under s. 56 was for non-compliance with the terms of the terminated collective agreement in respect of 5% additional contribution by the company over and above the statutory rates prescribed by the Employees Provident Fund Act, during the period of re-negotiation with a view to entering a new collective agreement, i.e. accruing after termination of the agreement. In the absence of a saving or continuation clause, it was held by this Court that once a collective agreement had been terminated in accordance with its terms, it ceased to have a binding effect on the parties. It was in this context that the Court stated that "it is inherent in s. 56(1) that the complaint to the Industrial Court for non-compliance can only be made during the currency of the collective agreement and not after its termination." This statement should not be read out of context to mean that the complaint cannot be made for non-compliance after the expiry of the agreement of a right which has accrued during the currency of the agreement. It is obvious that where a right has accrued and a claim is payable during the currency of the agreement, such a claim cannot be disbarred merely because the agreement has expired or been terminated. In the present case, if the right to the 1984 annual increment could be shown to have accrued during the currency of the 1982 agreement, the application for non-compliance would certainly be valid even if the claim itself was made after its expiry.

Accordingly, in our judgment, the question that lies at the heart of this appeal is one of pure construction. What calls for resolution is the question whether the parties, objectively speaking, intended that the collective agreement should continue in existence until a fresh agreement was negotiated. That intention is, of course, to be ascertained from the language employed by the parties in the collective agreement. However, before embarking upon that exercise, it is important for us to bear in mind two broad and general matters that govern the approach that is to be adopted when interpreting a document such as that which has fallen for construction in the present case.

First, it is important to bear in mind that the ordinary rules of construction whose assistance Courts often pray in aid to determine contractual intention do not apply when interpreting a collective agreement. An application of these rules will necessarily involve a rather strict and legalistic approach which is to be avoided in a case such as the present. Parliament, fully realising that a just solution may not result in the field of industrial relations by the application of the rules of interpretation that operate in the environment of the common law, has enacted s. 30(5) of the Act which reads as follows:

> The Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.

Secondly, due recognition should be accorded to the fact that a collective agreement is not a commercial document entered into between businessmen aided by legal advice. A collective agreement deals with far more basic issues that relate to the livelihood of workmen, such as their wages and other rudimentary benefits that are essential for sustaining life. It will therefore be unsurprising to find such agreements couched in rather loose language, often lacking the degree of precision with which lawyers are familiar. A reasonable and pragmatic approach, shorn of an excess of legal learning, is therefore called for when construing a collective agreement, and in particular, any machinery that the workmen and their employer have established for the resolution of their differences.

We may add that we find much support for the view we take of the matter – in particular, the broad and liberal approach that is to be adopted to the construction of collective agreements – from the following passages in the judgment of Shah J in *Delhi Cloth Mills Co. Ltd. v. Its Workmen* [1969] 2 LLJ 755, 767, 768*:*

> We consider it right to observe that in adjudication of industrial disputes settled legal principles have little play: the awards made are often the result of *ad hoc* determination of disputed questions, and each determination forms a precedent for determination of other disputes. An attempt to search for principle from the law built up on those precedents is a futile exercise. To the Courts accustomed to apply settled principles to facts determined by the application of the judicial process, an essay into the unsurveyed expanses of the law of industrial relations with neither a compass nor a guide, but only the pillars of precedents is a disheartening experience. The Constitution (and, in Malaysia, Parliament) has however invested this Court with power to sit in appeal over the awards of industrial tribunals which are, it is said, founded on the somewhat hazy background of maintenance of industrial peace, which secures the prosperity of the industry and improvement of the conditions of workmen employed in the industry, and in the absence of principles precedents may have to be adopted as guides — somewhat reluctantly — to secure some reasonable degree of uniformity or harmony in the process.

a But in the branch of law relating to industrial relations the temptation to be crusaders instead of adjudicators must be firmly resisted. It would not be out of place to remember the statement of the law made in a different context but nonetheless appropriate here by Douglas, J, of the Supreme Court of the United States in *United Steel Workers of America v. Enterprise Wheel and Car Corporation* [[1960] 363 U.S. 593]:

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> ... as arbitrator ... does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essenceo from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, Courts have no choice but to refuse enforcement of
c the awards.

We may at once state that we are not for a moment suggesting that the law of industrial relations developed in our country has proceeded on lines parallel to the direction of the law in the United States

d ....

We may repeat that in matters relating to the grant of gratuity and even generally in the settlement of disputes arising out of industrial relations, there are no fixed principles, on the application of which the problems arising before the tribunals or the Courts may be determined and often precedents of cases determined *ad*
e *hoc* are utilised to build up claims or to resist them. It would, in the circumstances, be futile to attempt to reduce the grounds of the decisions given by the industrial tribunals, the Labour Appellate Tribunal and the High Courts to the dimensions of any recognised principle.

It is with these matters in mind that we approach the inquiry whether the
f Industrial Court placed an erroneous interpretation on the first award and the collective agreement. And having done so, we are, with respect, unable to detect any error in the reasoning of the Industrial Court in the second award.

In our judgment, arts. 38(95) through (99) provide the machinery by which
g the parties are to harmoniously negotiate the wages and other basic amenities of the workmen in the employ of the respondent. The effect of these clauses may, we think, be summed up as follows:

(1) The life of the collective agreement shall be three years from 1 January
h 1985 until 31 December 1987.

(2) If the union wishes to negotiate a fresh agreement that would govern the benefits of the workmen after the aforesaid three year period, it must give a three-month notice and forward its new proposals for the respondent's consideration.

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(3) Until a new agreement has been concluded, the collective agreement is to remain in place in order to ensure that the workmen will not receive any lesser benefits than those already in existence.

When viewed in this manner and reading arts. 38(95) through (99) as a whole, we are driven to the conclusion that the parties intended the collective agreement to remain in force until it was replaced by another agreement. And this is exactly the same conclusion that the Industrial Court arrived at.

With respect, we are unable to accept the respondent's argument that the appellant's notice dated 15 October 1987 had the effect of permanently terminating the collective agreement. The suggested construction of the relevant terms of the collective agreement would impale the appellant upon the horns of a dilemma. When arts. 38(95) and (99) are read together, as indeed they ought to be, the appellant, in order to commence negotiations for a fresh agreement, has to first terminate the collective agreement by giving to the respondent a three month notice. Yet, by this very act, the appellant would have wrought havoc upon its members in the respondent's employment by depriving them of the benefits under the collective agreement.

The illogical and unjust result that would be brought about by an acceptance of the respondent's argument sufficiently demonstrates its fallacy. To hold that the collective agreement does not continue despite the notice in question would, in our judgment, render art. 38(96) of the collective agreement meaningless. That article was, no doubt, inserted by the parties to meet the very mischief which the respondent suggests to be the true result.

In The *Life Insurance Corporation of India v. D.J. Bahadur & Ors.* AIR [1980] SC 2181, 2198, Krishna Iyer J, when speaking for the majority, repulsed a not altogether dissimilar argument to that advanced by the respondent before us in the following words:

> It is inconceivable that any other alternative subsists. For instance, imagine a case where for 30 years an award or settlement might have given various benefits to employees and at the end of 30 years a notice terminating the settlement were given by the employer. Does industrial law absurdly condemn the parties to a reversion to what prevailed between them 30 years ago? If the employees were given Rs. 100 as salary in 1947 and, thereafter, by awards and settlements the salary scale was raised to Rs. 1000 could it be the Management might, by unilateral yet disastrous action give notice under s. 19(2) or (6) terminating the settlement or award, tell the workers that they would be paid Rs.100 which was the original contract although in law that contract had been extinguished totally by a later contract of settlement or by force of an award? The horrendous consequences of such an interpretation may best be left to imagination.

> Moreover, if industrial peace is the signature tune of industrial law, industrial violence would be the vicious shower of consequences if parties were relegated either to an ancient and obsolete contract or to a state of lawless hiatus.

Although the context in which these words were uttered may differ from the present, we find the reasoning therein contained to support the view we take of the matter.

Left unpersuaded by Sivabalah's arguments, we were, at the close of his submissions, convinced that the preliminary view we had earlier formed of the matter was indeed correct.

Accordingly, the appeal was allowed and the respondent was ordered to bear the costs of the appeal and of the proceedings in the Court below. The orders made by the High Court were set aside and the second award was restored. The deposit paid into Court by the appellant as security was ordered to be refunded to it.

Reported by Gan Peng Chiang